HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT APPEAL Nos. 2369 & 2375 OF 2005

Date : 23-08-2007

Between:

G.Renu Gonela & another.

…..Appellants.

and

The Jubilee Hills Coop. House Building Soiety Ltd.,
rep. by its President. & others.

.….Respondents

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT APPEAL Nos.2369 And 2375 OF 2005

COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki, J)

These two writ appeals are being heard together and are being disposed of by this common judgment, as they raise common questions of law and fact. Facts are taken from Writ Appeal No.2369 of 2005.

Writ Petition No.27098 of 1996 was filed by respondent No.1 in the Present writ appeal. This writ petition was dismissed as withdrawn on 26.08.1999 on the representation made by Sri P.Lakshmanna, counsel for the writ petitioners. Thereafter, two applications came to be filed, being WPMP.Nos.4159 and 4160 of 2005. WPMP.No.4159 of 2005 was for the purpose of seeking condonation of delay in filing the petition to set aside the order of dismissal and the other application i.e. WPMP.No.4160 of 2005 was for setting aside the order of dismissal and restoring the writ petition. The Court, by its

order dated 23.03.2005, dismissed the application for condonation of delay and as such, the petition seeking setting aside the order dismissing the writ petition, also was dismissed. Thereafter, another application came to be filed being WPMP.No.16788 of 2005 to recall the order dated 23.03.2005 passed in WPMP.No.4159 of 2005. It was contended that presence of the Counsel was wrongly noted in the order. The learned Single Judge, after hearing the parties, recalled the order dated 23.03.2005, allowed WPMP.No.4159 of 2005 and ordered to list WPMP.No.4160 of 2005 for hearing. The appellant is aggrieved of the order passed by the learned Single Judge, which merely condones the delay.

The case of the writ petitioner was that the writ petition had been dismissed as withdrawn pursuant to the representation made by the counsel for petitioner. It is contended that this request by the Counsel was made on the basis of instructions given to him by the Chairman of the Society only with a view to confer undue advantage to the 1st respondent, to the detriment of the Society. The Chairman had authorized withdrawal of the writ petition fraudulently, without the consent of the Broad Based Committee. Petitioner had taken charge as Member Secretary on 15.05.2004 and had come to know that the Chairman had superseded the Broad Based Committee. It may also be noted that the Chairman was a bureaucrat

appointed by the Government for the management of the Committee. The learned Single Judge had referred to various judgments of the Supreme Court and come to the conclusion that this was a case in which the delay could be condoned. The application seeking recall of the order of dismissal of writ petition has not been heard so far.

We do not find any ground to interfere in the discretion exercised by the learned Single Judge and in peculiar facts and circumstances of the case, where it was contended that the writ petition had been withdrawn without the authority and that the present Member Secretary of the Society had no knowledge of dismissal of the writ petition till he assumed office, the order condoning the delay cannot be faulted with.

For these reasons, we do not find merit in these appeals, which are accordingly dismissed.

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BILAL NAZKI, J

23-08-2007

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S. ANANDA REDDY, J

ajr